

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JOHNNY M. WILLIAMS, JR.,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

C16-814 TSZ

(related to CR94-398 TSZ
CR94-548 TSZ
CR94-550 TSZ
CR94-604 TSZ)

ORDER

THIS MATTER comes before the Court on petitioner's motion under 28 U.S.C. § 2255 to vacate, set aside, or correct his sentence. Petitioner relies on *Johnson v. United States*, 135 S. Ct. 2551 (2015), and *United States v. Vivas-Ceja*, 808 F.3d 719 (7th Cir. 2015), to argue that the firearm enhancements, which comprise the bulk of his sentence, should be vacated. Petitioner's contention lacks merit.

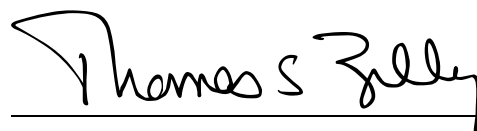
Petitioner was convicted of five counts of armed bank robbery and five counts of the use of a firearm during the commission of a crime of violence. His sentence was based on a total offense level of 25 and a criminal history category of III, resulting in a guideline range of 70-to-87 months, to run consecutively to a total of 85 years in enhancements (one 5-year enhancement and four 20-year enhancements). No portion of petitioner's sentence was computed pursuant to the Armed Career Criminal Act of 1984, 18 U.S.C. § 924(e), which was at issue in *Johnson*, or pursuant to the provision of the

1 Immigration and Nationality Act concerning penalties for illegal reentry by removed
2 aliens, 8 U.S.C. § 1326(b), which was at issue in Vivas-Ceja. Moreover, unlike in
3 Johnson and Vivas-Ceja, in this case, a “residual clause” was not used to determine
4 petitioner’s sentence. Rather, petitioner received firearm enhancements under 18 U.S.C.
5 § 924(c) pursuant to the “elements” definition of a “crime of violence,” which treats a
6 felony as a crime of violence if it “has as an element the use, attempted use, or threatened
7 use of physical force against the person or property of another.” Id. at § 924(c)(3)(A).
8 Although bank robbery can be accomplished by various means, petitioner was indicted
9 for carrying out such offense “by force and violence, or by intimidation,” see 18 U.S.C.
10 § 2113(a), and neither Johnson nor Vivas-Cejai support an argument that the statute
11 under which the firearm enhancements of petitioner’s sentence were imposed, namely
12 18 U.S.C. §§ 924(c)(1)&(3)(A), is unconstitutionally vague.

13 Petitioner’s § 2255 motion, docket no. 1, is DENIED. In addition, because “jurists
14 of reason” could not conclude that the issue presented is “adequate to deserve
15 encouragement to proceed further,” Miller-El v. Cockrell, 537 U.S. 322, 327 (2003), a
16 certificate of appealability is DENIED. The Clerk is DIRECTED to send a copy of this
17 Order to petitioner pro se and all counsel of record, and to close this case.

18 IT IS SO ORDERED.

19 Dated this 10th day of June, 2016.

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22 Thomas S. Zilly
23 United States District Judge